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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,442	07/26/2001	Masanao Kohashi	074129-0485	4440

22428 7590 07/19/2004

FOLEY AND LARDNER  
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3000 K STREET NW  
WASHINGTON, DC 20007

EXAMINER
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THOMPSON, CAMIE S

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 09/912,442	<b>Applicant(s)</b> KOHASHI ET AL.	
	<b>Examiner</b> Camie S Thompson	<b>Art Unit</b> 1774	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.


Claim(s) rejected: 1,4-6 and 10.

Claim(s) withdrawn from consideration: 7 and 8.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 2. NOTE: The amendment of claim 10 narrows the scope of the claims. An additional search is required..

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that the McClary reference does not disclose the main dispersion peak temperature of loss tangent in the measurement of dynamic viscoelasticity at 110 Hz of less than or equal to 147.0 degrees [element (d)] of instant claim 1. The McClary reference discloses a polyester multifilament yarn comprising at least 90 mol percent of polyethylene terephthalate having an intrinsic viscosity of 0.85 dl/g as does applicant. Additionally, the McClary reference discloses a birefringence of about 0.190 to .205, which is within the range of applicant's claimed birefringence. It would be expected that the main dispersion peak temperature of loss of tangent in the measurement of dynamic viscoelasticity at 110 Hz is less than 147.0 deg C would be the same for both the instant invention and the McClary reference in that McClary and applicant have the same product. Additionally, the main dispersion peak temperature of loss tangent in the measurement of dynamic viscoelasticity is a process limitation. The measurement of dynamic viscoelasticity is not given any patentable weight in a product claim. The patentability of a product depends solely on the product itself. Both McClary and applicant have a polyester fiber comprising polyethylene terephthalate at 90 mol percent or higher and having an intrinsic viscosity of 0.85 dl/g. Applicant argues that the fiber of the McClary reference is outside of the range because McClary is referring to a drawn yarn. Applicant does not claim an undrawn yarn in instant claim 1. The rejection is maintained .

  
RENA DYE  
Supervisory PRIMARY EXAMINER  
A.U. 1774